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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,101	08/25/2003	Forrest B. Fencil	S002-P03096US	3136
33356	7590	06/14/2005	EXAMINER	
SoCAL IP LAW GROUP LLP 310 N. WESTLAKE BLVD. STE 120 WESTLAKE VILLAGE, CA 91362			CHAUDHRY, SAEED T	
			ART UNIT	PAPER NUMBER

1746

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/648,101

Applicant(s)

FENCL ET AL.

Examiner

Saeed T. Chaudhry

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5-16-05
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Applicant's amendments and remarks filed May 16, 2005 have been acknowledged by the examiner and entered. Claims 1-23 have been canceled and claim 24-52 are pending in this application for consideration.

Rejection of claims under obviousness-type double patenting of Patent No. 6,627,000; 6,500,267; 6,280,686; 6,267,924; 6,245,293; 5,817,276 has been withdrawn in view of the terminal disclaimer filed on May 16, 2005.

Claim Rejections - 35 USC § 112

Claims 49-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claim 49, at last line, "less than 100 parts per billion", in claim 50, at last line, "less than 10 parts per billion" and in claim 51, at last line, "organic compounds is below a threshold of human olfactory detection", are recited. These limitations are not supported by the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (c) he has abandoned the invention.
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

Art Unit: 1746

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(f) he did not himself invent the subject matter sought to be patented.

(g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

Claims 24-26, 29-33, 35-36, 39-40, 43 and 49-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Hollander.

Hollander (5,334,347) discloses a method for controlling the microorganism in a heat transfer unit, wherein a UV germicidal tube 51 is positioned adjacent to the coil and drain pan of the heat exchanger surface (see Fig. 5). The vertically disposed section of the U-shaped tube is positioned perpendicularly to the illustrated fins of the heat exchanger. In addition, the interior of the air treatment system can be made highly reflective material in order to intensify the effect of the UV radiation (see col. 7, lines 28-26). Sterilizing of the heat exchanger is done while air is passing and radiation is emitted in the magnitude of 254 nm (see claim 10). Highly reflective material inherently reflect the UV radiations and increase the flux density of the UV radiation. Even though the reference did not disclose specifically the fins of a heat exchanger but heat exchangers are made with combination of fins and coils as shown in figures 4 and 5. Therefore, UV radiations are reflected from the fins surfaces since UV tube is in front of the coils and fins. Hollander did not specifically disclose that the radiation would reduce the organic compound concentration less than 100 or 10 parts per billion. Hollander discloses to use radiation on the coil. Therefore, inherently reduces the concentration of the compound in the range of the claimed process. The claimed process claim "radiation from the germicidal lamp at least intermittently",

Art Unit: 1746

which means that it also include continuous radiation since its include "at least". Therefore, Hollander still read on the claimed process.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 27-28, 34, 37, 38, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hollander.

Hollander was discussed supra. However, the reference fails to disclose UV radiation emits at 253.7 nm and the temperature of the surface is below 58° F.

It would have been obvious at the time applicant invented the claimed process to manipulate the wave length of the UV radiations because Hollander disclose to radiate the surface at 254 nm and show the effect of radiation at 254.7 nm which kill E-Coli bacteria. Therefore, one of ordinary skill in the art would manipulate the radiation wave length for better and efficient results. Further, Hollander disclosed to use Radiation while air is passing through

the heat exchanger (see claim 10). Therefore, one of ordinary skill in the art would expect that the temperature of the heat exchanger surfaces would be 58 F or less.

Response to Applicant's Arguments

The applicant argued that none of the prior art discloses or suggest “continuing to irradiate the surface with the UVC radiation from the germicidal lamp at least intermittently until the surface is organically clean”.

This argument is unpersuasive because the limitation “at least” do not exclude continuous radiation, which is disclosed by Hollander. The claimed process still read on the Hollander’s process.

Applicant argued that the art rejection has been overcome by the amendment to the claims, which include a feature, “positioning the germicidal lamp in proximity to the heat transfer coil, wherein the intensity of the UVC radiation striking the heat transfer coil is, to a degree, independent of the distance of the germicidal lamp to the heat transfer coil”.

This argument is not persuasive because this limitation is inherently done in the process of Hollander. The applicant is advised to overcome the Hollander reference, the applicant include the limitations which produces the effect not the result. The applicant has not shown that what is different than the Hollander process.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeed T. Chaudhry whose telephone number is (571) 272-1298. The examiner can normally be reached on Monday-Friday from 9:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Michael Barr, can be reached on (571)-272-1414. The fax phone number for non-final is (703)-872-9306.

Art Unit: 1746

When filing a FAX in Gp 1700, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communication with the PTO that are for entry into the file of the application. This will expedite processing of your papers.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Saeed T. Chaudhry
Patent Examiner

MICHAEL BARR
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'M. Barr', with a long horizontal flourish extending to the right.